



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



March 10, 2003

Lisa Howard
PO Box 200
Farmington, NH 03835

**NOTICE OF DECISION
ADMINISTRATIVE FINE
No. AF 02-034 (WETLANDS)**

Dear Ms. Howard:

As you are aware, by Notice of Proposed Administrative Fine and Hearing No. AF 02-034 issued October 10, 2002, the Water Division sought administrative fines totaling \$11,500 against you for alleged violations of RSA 482-A, the state wetlands statute, arising from unauthorized work conducted on property located on Chipmunk Lane and Blueberry Drive, Farmington, NH ("the Property"). Pursuant to RSA 482-A:13 and RSA 482-A:14, III, and based upon my review of the evidence presented at the hearing held on this matter on January 6, 2003, I have concluded that a fine of \$11,500 is appropriate as set forth below:

- ▶ A fine in the amount of \$1,000 is imposed against you for placing fill in two locations in wetlands on the Property.
- ▶ A fine in the amount of \$500 is imposed against you for dredging approximately 2,500 square feet of wetlands to create a pond on the Property.
- ▶ A fine in the amount of \$10,000 is imposed against you for failing to comply with items E.1, E.2, E.3, E.4, and E.5 of Administrative Order No. WD 2002-14.

The \$11,500 fine shall be paid within 30 days of the date of the decision or at your election, in five equal payments of \$2,300 each in accordance with the following schedule:

First payment due:	April 9, 2003	Fourth payment due:	July 9, 2003
Second payment due:	May 9, 2003	Fifth payment due:	Aug. 8, 2003
Third payment due:	June 9, 2003		

Fine payments shall be by check or money order payable to "Treasurer-State of NH" and sent to the attention of the Legal Unit, DES/Office of the Commissioner, PO Box 95, Concord, NH 03302-0095.

Wetlands are regulated under RSA 482-A. The purpose of this statute is to protect wetlands from unregulated alteration because the state recognizes that these areas are a valuable resource that provide wildlife habitats, storm water retention, water supplies, and nutrient and pollutant filtering. There are many types of wetlands in New Hampshire: swamps, bogs, wet meadows, rivers, and lakes. Under the statute, specific areas of the Property are considered

wetlands and are under wetlands jurisdiction.

Administrative Order No. WD 2002-14 ("the Order") was issued to you on April 1, 2002. The Order required you, in part, to: (1) remove 1,728 square feet of fill blocking the stream at the intersection of Blueberry Drive and Chipmunk Lane on the Property ; (2) remove 546 square feet of fill from the front of the culvert on Blueberry Drive; (3) submit restoration plans for the pond on the Property; (4) retain a wetland scientist to supervise the implementation of the restoration plan and submit restoration progress reports; and (5) upon approval from DES, implement the restoration plan. You are liable for dredging and filling in wetlands on the Property and for not complying with the Order and preventing further damage to the wetlands and the environment.

This decision is based on the following findings and conclusions:

1. Lisa Howard owns the land located at the corner of Chipmunk Lane and Blueberry Drive, Farmington, NH, and more particularly described on Farmington Tax Map R-44, as lot 11 ("the Property").
2. RSA 482-A:3, I states that no person shall excavate, remove, fill, dredge, or construct any structures in or on any bank, flat, marsh, or swamp in or adjacent to the waters of the state without first obtaining a permit from DES.
3. RSA 482-A:14 provides that failure, neglect, or refusal to comply with RSA 482-A or rules adopted under this chapter, or an order or condition of a permit issued under RSA 482-A, and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by RSA 482-A shall be deemed violations of RSA 482-A.
4. On July 26, 2001, DES received a complaint of wetlands violations on the Property.
5. By letter dated August 3, 2001, DES informed Ms. Howard of the complaint. DES advised her that she was required to obtain a wetlands permit for the work and requested that she obtain authorization for the work.
6. On August 16, 2001, DES inspected the Property and discovered that approximately 1,728 square feet of the stream and associated wetlands at the corner of Chipmunk Lane and Blueberry Drive on the Property were filled; approximately 1,046 square feet of two drainage swales adjacent to or on the Property were filled; and a pond approximately 2,500 square feet was excavated in wetlands.
7. On September 6, 2001, DES issued Letter of Deficiency WET 2001-44 ("the LOD") to Ms. Howard requesting, in part, that she remove the three areas of fill (546 square feet, 500 square feet, and 1,728 square feet) within 15 days and submit an application for the pond construction.
8. On October 17, 2001, DES reinspected the Property with Everett Howard, Ms. Howard's husband, and Mark West, a certified wetland scientist and Ms. Howard's consultant. At

this inspection Mr. Howard acknowledged that he placed fill in the swales and excavated the pond.

9. At the October 17 inspection, the parties confirmed that the 546 square feet of fill along Blueberry Drive and the 1,728 square feet of fill at the corner of Blueberry Drive and Chipmunk Lane was within DES's jurisdiction. Mr. West disputed that the 500 sq. ft. of fill was not within jurisdiction and DES subsequently agreed to withdraw this disputed area from the LOD.
10. On November 29, 2001, DES inspected the Property and staked out a proposed restoration area at the intersection of Blueberry Drive and Chipmunk Lane.
11. Mr. Howard agreed to have an engineer develop plans for the restoration by the end of December 2001, to remove 546 square feet of fill from in front of the culvert along Blueberry Drive, and to submit an after-the-fact application for the pond.
12. DES never received the requested plans for restoration. Thus, by letter dated January 3, 2002, DES contacted Ms. Howard's attorney, Francis Bruton and requested the plans and the after-the-fact application for the pond.
13. DES never received the requested plans for restoration. Thus, on January 18, 2002, DES telephoned Mr. Bruton and again requested the plans.
14. On February 11, 2002, DES spoke with Mr. Howard by telephone. Mr. Howard indicated that he did not want to implement the proposed restoration plan that was staked out during the November 29th field inspection. He proposed an alternative plan that entailed crossing the intersection of Chipmunk Lane and Blueberry Drive adjacent to the Property with a long culvert that would cut diagonally northwest across the intersection.
15. Blueberry Drive and Chipmunk Lane are private roads owned and maintained by the Yonder Plateau, Inc. Property Owners Association ("the Association"). The Association is unwilling to allow the proposed culvert to be installed on their property.
16. On April 1, 2002, DES issued Administrative Order No. WD 2002-14 ("the Order") to Ms. Howard requiring her, in part, to remove 1,728 square feet of fill from the intermittent stream, remove the 546 square feet of fill from the culvert, submit restoration plans for the pond, retain a qualified wetland scientist to supervise the implementation of the restoration plan and to submit restoration progress reports, and implement the restoration plan after receiving written approval from DES.
17. Ms. Howard has not removed the 1,728 and 546 square feet of fill or submitted restoration plans from a certified wetlands scientist.
18. Ms. Howard violated RSA 482-A:3, I by placing 1,728 square feet of fill at the corner of Blueberry Drive and Chipmunk Lane and 546 square feet of fill in front of a culvert along Blueberry Drive.

19. For a violation of RSA 482-A:3, I, Env-C 614.02(b)(1) authorizes a fine of \$500 for each instance of fill for a total fine of \$1,000.
20. Ms. Howard violated RSA 482-A:3, I by dredging approximately 2,500 square feet of wetlands to create a pond without first obtaining a permit from DES.
21. For a violation of RSA 482-A:3, I, Env-C 614.02(a)(1) authorizes a fine of \$500.
22. Ms. Howard violated RSA 482-A:14, III by failing to comply with Administrative Order No. WD 2002-14 by (1) not removing 1,728 square feet of fill; (2) not removing 546 square feet of fill; (3) failing to submit a restoration plan for the 2,500 square foot pond; (4) not retaining a certified wetland scientist; and (5) failing to implement the restoration plan in accordance with a DES restoration approval letter.
23. For a violation of RSA 482-A:14, III, Env-C 614.06(e) authorizes a fine of \$2,000 for each violation for a total fine of \$10,000.
24. None of the factors identified in Env-C 601.06(c)(1) through (4) apply to reduce the amount of fine that can be imposed for the violation noted in #18, 20, and 22 above.

You violated RSA 482-A by dredging and filling in wetlands without a permit from DES and by failing to comply with the Order. Thus, for the reasons discussed above, I have concluded that the \$11,500 fine imposed against you is appropriate.

Any party aggrieved by this decision may file a motion for reconsideration within 30 days of the date of this decision, in accordance with RSA 541 and Env-C 206.

Very truly yours,

COPY

Robert Monaco
Acting Commissioner

Enclosure

cc: Farmington Conservation Commission
Farmington Board of Selectmen
Jennifer Patterson, DOJ/EPB
Harry T. Stewart, P.E., Director, Water Division
Mark Harbaugh, Enforcement Attorney
Susan Weiss Alexant, DES Hearings and Rules Attorney
Gretchen Rule, DES Legal Unit
Marjory Swope, NHACC